



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,558	05/16/2001	Robert W. Tuttrup	2280.2710	1522

5514 7590 08/11/2004

FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER
----------

GART, MATTHEW S

ART UNIT	PAPER NUMBER
----------	--------------

3625

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/855,558

Applicant(s)

TUTTRUP ET AL.

Examiner

Matthew s Gart

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/1, 12/1, 4/2</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC §101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1-12 and 31-34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The invention as recited in the claims is merely an abstract idea that is not within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

Referring to claims 1-12. Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea. "A method for delivering goods ordered by a plurality of customers, etc." mere nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not affect or affect the underlying process.

Referring to claims 31-34. Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context,

Art Unit: 3625

"functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data. Claims 31-34 can be characterized as functional descriptive material. Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se. Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir.1994).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulose Patent Application Publication 2001/0027471 in view of Yamada Patent No. 6,336,100.**

Referring to claim 1. Paulose discloses a method for delivering goods ordered by a plurality of customers, comprising the steps of:

Art Unit: 3625

- A plurality of customers placing orders for goods from a vendor (Paulose: paragraph 0009); and
- The vendor fulfilling its orders by combining into a single shipping order the goods ordered by a plurality of customers who are geographically close to a single local pick-up (Paulose: paragraph 0009).

Paulose does not expressly disclose the vendor causing the single shipping order to be sent to a local pick-up point. Yamada discloses the vendor causing the single shipping order to be sent to a local pick-up point (Yamada: Figure 1, "Convenience Store").

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have modified the system of Paulose to have included the limitations of Yamada as discussed above in order to provide an effective delivery system which eliminates redelivery due to the customer's absence.

Referring to claim 2. Paulose further discloses a method wherein the goods are ordered via the Internet (Paulose: Figure 1).

Referring to claim 3. Paulose in view of Yamada discloses a method according to claim 1 as indicated supra. Yamada further discloses a method comprising notifying the customer when the order is available for pick-up (Yamada: column 3, lines 55-65).

Referring to claim 4. Paulose in view of Yamada discloses a method according to claim 1 as indicated supra. Yamada further discloses a method wherein a customer or customer's agent retrieves a collection of goods from the vendor from the local pick-up point (Yamada: column 3, line 55 to column 5, line 14).

Art Unit: 3625

Referring to claims 5-8. Claims 5-8 are rejected under the same rationale as set forth above in claims 1-4.

Referring to claims 9-12. Claims 9-12 are rejected under the same rationale as set forth above in claims 1-4.

Referring to claims 13-16. Claims 13-16 are rejected under the same rationale as set forth above in claims 1-4.

Referring to claims 17-21. Claims 17-21 are rejected under the same rationale as set forth above in claims 1-4.

Referring to claims 22-25. Claims 22-25 are rejected under the same rationale as set forth above in claims 1-4.

The Examiner notes, claims 22-25 contains insufficient recitation of structure to support the functions of the shopping server, therefore any shopping server on a network would read on the claims.

Referring to claims 26-30. Claims 26-30 are rejected under the same rationale as set forth above in claims 1-4.

The Examiner notes, claims 26-30 contains insufficient recitation of structure to support the functions of the network server, therefore any network server would read on the claims.

Referring to claims 31-34. Claims 31-34 are rejected under the same rationale as set forth above in claims 1-4.

Art Unit: 3625

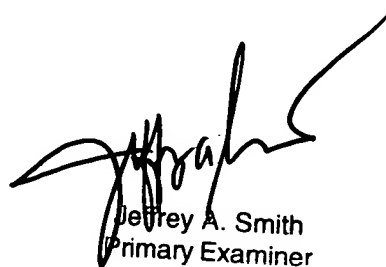
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew s Gart whose telephone number is 703-305-5355. The examiner can normally be reached on 8:30AM to 5:00PM m-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MSG  
July 28, 2004



Jeffrey A. Smith  
Primary Examiner